TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904

No. [redacted]

MARGARET W. PEARSON AND J. R. PEARSON, HER HUSBAND, APPELLANTS,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JANUARY 28, 1904

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SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1924

[fol. 1] **IN THE COURT OF CLAIMS**

No. C-738

MARGARET W. PEARSON and J. R. PEARSON, Her Husband, Petitioners,

vs.

THE UNITED STATES

Removal of Improvements Contrary to Provisions of Lease

I. PETITION—Filed June 12, 1923

To the Honorable the Chief Justice and Associate Justices of the Court of Claims:

Your petitioners, Margaret W. Pearson and J. R. Pearson, her husband, respectfully represent:

1

That petitioner, Margaret W. Pearson, is and at all times hereinafter stated was the wife of petitioner J. R. Pearson; that petitioner Margaret W. Pearson at all times hereinafter stated did own a cer- [fol. 2] tain tract of land, situate, lying and being in Duval County, State of Florida, and more particularly described as follows:

"A. E. Ferguson Grant, being Section Forty-three (43), in Township Three (3), Range Twenty-six (26) East, containing five hundred and thirty-five (535) acres, more or less."

2

That under date of September 11, A. D., 1917, petitioners did execute a lease of the afore-described land unto Jacksonville Chamber of Commerce, a corporation having its principal office in the City of Jacksonville, Duval County, Florida, "for and during the continuance of the war now in progress between the United States of America and the German Empire, provided, however, that this lease shall terminate and expire three years from the date hereof, it being the intent and purpose to create a lease to run for a period not longer than three years which period is to expire upon the termination of said war should said war be terminated within three years from the date hereof," which said lease contained certain terms, conditions and provisions as will more fully appear in and by copy of said lease hereto attached as Exhibit "A," reference to which said Exhibit "A" is hereby made and which said Exhibit "A" is hereby made a part hereof; that among said terms, conditions and provisions it was expressly covenanted and agreed:

"And the lessors, for themselves, their heirs, legal representatives and assigns, covenant and agree with the lessee, its successors and assigns, that all buildings, fixtures and/or other improvements placed in or upon said land during said term by the lessee, its suc-[fol. 3] cessors or assigns, shall remain the exclusive property of the lessee, its successors or assigns, and at all times during the peri-d of three months next after the expiration of said term said lessee, its successors or assigns, may enter upon said land for the purpose of removing and may remove said buildings, fixtures and/or other improvements."

3

That shortly after the execution of the aforesaid lease by petitioners the said Jacksonville Chamber of Commerce did verbally agree with the War Department of the Government of the United States, the exact date and terms of said verbal agreement being unto your petitioners unknown, but which date was within a few weeks after the date of said lease, that the afore-described land might be used by the said War Department as a portion of the land upon which to lay out and construct a training camp for troops of the United States Army, said land being thereafter included in and forming a part of Camp Joseph E. Johnston; that the only right or interest of said Jacksonville Chamber of Commerce at any time was that derived through and under the lease from petitioners aforesaid; that the United States became privy in estate and by contract with your petitioners upon entering into the verbal agreement aforesaid for the use of said land; that the United States could and did derive no greater or further right or interest through said agreement with said Jacksonville Chamber of Commerce in or to said land or appurtenances than such as were held by said Jacksonville Chamber of Commerce through and under said lease as aforesaid; and the United States were bound and obligated not to exceed or violate the terms, [fol. 4] conditions and provisions of said lease, copy of which is hereto attached as Exhibit "A"; that said Jacksonville Chamber of Commerce did consent and agree that said land might be occupied by the United States as aforesaid and petitioners did acquiesce and consent to the use and occupancy of said land by the United States under and subject to the terms, conditions and provisions of said lease.

4

That during the rightful use and occupancy by the United States under the aforesaid agreement and lease, the War Department erected extensive buildings upon said lands and placed extensive improvements thereon, laid pipes and conduits in said land for water mains and other purposes; that what was known as the "base hospital" of Camp Joseph E. Johnston was erected upon the said land as aforesaid, as were also homes for nurses and other buildings and structures; that said buildings were completed and fully equipped with all necessary appliances, facilities, plumbing and electric wiring, which appliances, facilities, plumbing and equipment, because of the use to which said buildings were put, were more extensive and

numerous than in other types of buildings, and were of a higher quality.

5

That by Act of Congress of March 3, 1919 (40 Stat. 1302), said hospital together with its equipment, including sites and leases, was transferred to the Treasury Department for the use of the Public [fol. 5] Health Service; that said lease from petitioners unto said Jacksonville Chamber of Commerce expired not later than, to-wit, three (3) years from its date, September 11, 1917, said expiration date being midnight of September 10, 1920, and the three (3) months' period within which buildings, fixtures and/or other improvements properly removable from said land could rightfully be removed, expired at midnight of, to-wit, December 10, 1920; that on December 9, 1920, letter was written by J. L. Doggett as attorney for petitioners and delivered to Commanding Officer, Camp Johnston, Jacksonville, Florida, which letter stated:

"I beg to advise that the lease, wherein the property known as the hospital grounds of Camp Johnson were leased to the City of Jacksonville and under the terms of which lease the Government of the United States occupied the grounds and directed the buildings on the hospital site, expired September 11, 1912, and by the terms of this lease three months was given after the expiration thereof within which any building might be removed, but that at the end of this period all further rights of entry and occupation by the lessee should cease. Therefore, December 11 is the date this property should be finally surrendered to the lessors without further removal or molestation of any of the property remaining thereon.

"I do not know what the plans of the War Department are in regards to the hospital property. I am taking this opportunity of notifying you in due time in order that should you have instructions to the contrary after December 11, that you might communicate the contents of this notification to the proper officials. I shall be more than glad at any time to confer with you concerning this matter and should you desire to see the original lease it is on file in the office of the City Commission of the City of Jacksonville.

"I am acting in this matter as attorney for J. R. Pearson and wife [fol. 6] of Knoxville, Tenn., who are the owners of this property."

That reply to said last mentioned letter was duly received, said reply being as follows:

"War Department
Headquarters, Camp Joseph E. Johnston
Jacksonville, Fla.

Dec. 10, 1920.

From: Commanding Officer, Camp Jos. E. Johnston, Fla.
To: Mr. John L. Doggett, Atty., 119-24 Heard Bldg., Jacksonville, Fla.
Subject: Leased Land—Base Hospital.

1. Reference your letter Dec. 9th, that portion of Camp Joseph E. Johnston known as "Base Hospital" was transferred from the War Department to the United States Public Health Service, a Bureau of the Treasury Department, effective about May 1st, 1919. All control by the War Department over this property and leases pertaining thereto, passed to the United States Public Health Service about that date. Matters referred to in your letter should be taken up with that Bureau of the Government.

2. Your letter has been transmitted to the Superintendent of Construction, U. S. Public Health Service Hospital No. 33 at this Camp.

(Signed) P. M. Stevens, P. M. Stevens, Maj. 61st Inf., Commanding." PMS—MS.

That under date of January 10, 1921, petitioners' said attorney, J. L. Doggett, wrote to Major Goodwin, Commanding Officer Base Hospital, Camp Johnston, Jacksonville, Florida, as follows:

[fol. 7] "I have not heard from you further concerning the conference held in my office not very long ago, concerning the disposition of the property now on the hospital grounds, and I, therefore, assume that our agreement stands the same as when we last considered this matter.

"If there has been any new developments I shall be glad to hear from you."

That subsequently petitioners' said attorney, J. L. Doggett, received the following letter:

"Treasury Department

United States Public Health Service Hospital No. 33

Office of Medical Officer in Charge

Jacksonville, Florida,
(Camp Johnston), January 15th, 1921.

Mr. John L. Doggett, 1119 Heard Building, Jacksonville, Fla.

SIR: I have just received a letter from Washington, stating that the matter of sending a representative of the Public Health Service to confer with you is now under consideration.

Further information will be furnished you immediately this office receives same.

Respectfully, (Signed) P. F. Goodwin, Superintendent of Construction."

That on March 3, 1921, said J. L. Doggett, attorney for petitioners, sent letter to Major Goodwin at Camp Johnston, Jacksonville, Florida, which stated:

"Some time ago I received a letter from you to the effect that the Public Health Department in Washington would send a representa-
[fol. 8] tive here to confer with me concerning the disposition of the matter we discussed in my office. At our last conference it was agreed that you would take no steps whatsoever in removing any materials from the buildings on this hospital property. I have been informed, however, that this agreement has not been complied with. I am loath to believe that such is the case, and of course I have taken no action whatsoever on account of our agreement.

However, in order to avoid any more unnecessary delay in this matter I suggest to you the propriety of urging immediate action of some character on the part of the Public Health Service."

Receipt of letter last afore-mentioned was acknowledged as follows:

"Treasury Department

United States Public Health Service Hospital No. 33 (Closed)

Office of Medical Officer in Charge

Camp Johnston,
Jacksonville, Florida, March 5th, 1921.

Mr. J. L. Doggett, 1119 Graham Building, Jacksonville, Florida.

SIR: Receipt of your letter of the 3rd inst. is herewith acknowledged, and same is being forwarded to the Surgeon General, Washington, D. C., for his attention.

Respectfully, (Signed) P. F. Goodwin, Superintendent of Construction." L.H.S.

That under date of January 10, 1921, said J. L. Doggett, attorney for petitioners, sent a letter to the Quartermaster General of the Army, Real Estate Department, Washington, D. C., as follows:

[fol. 9]

"Jan. 10, 1921.

From: John L. Doggett, Attorney at Law, as Agent for J. R. Pearson and wife, Margaret Pearson.

To: The Quartermaster General of the Army, Real Estate Department, Washington, D. C.

Subject: Land occupied by the United States Government at Camp Johnston, Jacksonville, Florida.

1. I am informed by the Commanding Officer at Camp Johnston that in order to obtain a formal surrender of the use and occupation of certain lands now occupied by the Government of the United States at Camp Johnston, and owned by J. R. Pearson and wife, Margaret Pearson, whom I represent as attorney and agent, that it is proper for a request to be directed to the above department. The land to which I refer is legally described as follows:

That parcel of land known as the A. E. Ferguson grant, being Section 43, in Township 3, Range 26, containing 535 acres more or less, Duval County, State of Florida.

This parcel of land includes the hospital grounds at Camp Johnston as well as a small part of the land within Camp Johnston itself. I have been informed that the hospital grounds proper are now under the United States Public Health Service, and all control by the War Department over this part of the property has ceased. Major P. M. Stevens, 61st Infantry commanding Camp Johnston, however, has informed me that there is a small part of this land occupied by the Government within the bounds of Camp Johnston proper, and that in order to obtain a secession of occupation of this small parcel by the War Department, that I could obtain the same by addressing this communication to the Real Estate Department. There are no buildings on this land, and it was simply idle land lying between Camp Johnston proper and the hospital grounds, and as the owners have been very desirous of regaining possession of this particular [fol. 10] tract, I will thank you if you will please give this matter as early attention as is practical and convenient, and inform me in the premises.

2. The owners of this property are making no claim whatsoever for loss of property or use or occupation of this land by the Government.

J. L. Doggett."

That subsequently petitioners' said attorney received letter from the Surgeon General in words and figures following:

"Treasury Department

Bureau of the Public Health Service

Washington

Office of the Surgeon General

In reply please refer to HD-21.
CHS: ARW: GFB.

March 28, 1921.

Pearson Tract, Jacksonville, Fla.

Judge John L. Doggett, Attorney at Law, Heard Building, Jacksonville, Florida.

SIR: Your letter of January 10, 1921, addressed to the Quartermaster General of the Army, Washington, D. C., in relation to the relinquishment of the Pearson Tract of land occupied by the United States in connection with Camp Joseph E. Johnston, Jacksonville, Florida, has been referred to this Bureau for reply.

Owning to the necessity of salvaging certain materials placed upon the property by the Government and now needed elsewhere

for hospital purposes, the use of the premises will be required until about May 1, 1921.

Respectfully, (Signed) H. S. Cumming, Surgeon General"

[fol. 11] That said J. L. Doggett, as attorney for petitioners, under date of April 6, 1921, did reply to the letter of March 28th, 1921, from the Surgeon General, stating:

"I am in receipt of your letter of March 28 in reply to my letter of January 10, in which I requested relinquishment of the Pearson tract of land occupied by the United States in connection with Camp Joseph E. Johnston.

In your letter you state that owing to the necessity of salvaging certain material placed on the property by the Government and now needed elsewhere for hospital purposes, the use of the premises will be required until about May 1, 1921.

In this connection I desire to call your attention to the fact that this property was leased from Mr. Pearson by the Chamber of Commerce of the City of Jacksonville, which organization assigned the lease to the City Commission of the City of Jacksonville, which in turn assigned it to the Government. The lease expired in September, 1920. Its terms provided that after the expiration of the lease, three months would be allowed for the removal of any buildings which had been placed on the property. At the expiration of this three months period, to-wit: in December, 1920, I had a conference with Major Goodwin who is in charge of the hospital property at Camp Johnston, and whom I understand represents the Public Health Service. At this meeting, I stated to Major Goodwin that while Mr. Pearson did not desire to embarrass the plans of the Government, yet under the terms of the lease all the buildings, etc., on the land were now a part of the property itself, and legally were no longer subject to removal. It was agreed that Major Goodwin should obtain authority from your office, or have some representative from your office communicate with me in order that a definite arrangement might be made with the Department of Public Health as to future procedure.

[fol. 12] This was done with the full understanding that there would be no further destruction of any buildings now standing or removal of any property which had not already been salvaged, to which Major Goodwin agreed, and this was confirmed by subsequent conferences.

I find now that the Department of Public Health has proceeded to continue its work of salvaging and tearing down buildings on this property without having giving me any further notice, contrary to the agreement between Major Goodwin and myself, as set forth above. I feel certain that this is no fault of Major Goodwin, as I assume that he is acting under orders from your Department, and in reply to a recent letter of mine he stated that he had referred the whole matter to your office.

I have refrained from taking any Court action whatsoever to enjoin the work of salvaging on this property, as I have felt sure that

a proper adjustment could be made of this matter, and I suggest to you the propriety of a prompt consideration of this matter.

Should you desire to clothe Major Goodwin with authority to deal with me for the disposition of the case, I should be glad to proceed with him upon a proper presentation of his credentials from your Department, or if you desire to treat directly with me, I will thank you to please advise me in the premises.

A prompt reply will be appreciated."

6

That, nevertheless, after all times had past and all periods elapsed within which such buldings, structures and improvements could have been rightfully removed, and in violation of the terms and provisions of said lease and of the rights of petitioners, jointly and severally, the Public Health Service of the Government of the United States did tear down, dig up and remove or cause to be torn [fol. 13] down, dug up and removed, all buildings, structures and improvements placed as aforesaid upon said land; that the exact date or dates of such removal is unto petitioners unknown, but petitioners are informed and believe and therefore aver that such removal was done as aforesaid in the early months of the year 1921, to-wit, the months of March, April, May, and June of said year.

7

That petitioners are unable to specify with particularity the description, value or quantity of materials, supplies, lumber, equipment, appliances, facilities, plumbing, wiring, piping and conduits, removed from said land when said Public Health Service demolished said buildings, structures and improvements in violation of the terms, conditions and provisions of said lease and which buildings, structures and improvements under the terms, conditions and provisions of said lease had become a part of the land itself and the title to which had passed to and vested in the owner of the reversion at the expiration of the three (3) months' period expressly specified and designated as the period and limitation for removel of such buildings, structures and improvements; that the records of the Government of the United States contain complete data showing the description and quantity of such materials, supplies, lumber, appliances, facilities, equipment, plumbing, wiring, piping and conduits, which went into said building, structures and improvements and which were removed from said land as aforesaid; that the records of the Government pertaining to said hospital are now in the United States Veterans' Bureau; that subsequent to the removal by the Public Health Service [fol. 14] as aforesaid of said buildings, structures and improvements, the President of the United States by Executive Order dated April 29, 1922, transferred said hospital, then and therein designated as "No. 33 Jacksonville, Florida," from the United States Public Health Service to the United States Veterans' Bureau and directed that "all records, files, documents, correspondence and other papers relating to the service rendered by the United States Public Health

Service in the operation of the hospitals and purveying depots hereby transferred * * * are hereby transferred to the United States Veterans' Bureau as of the effective date of this Order;" that application to examine said files and records in the United States Veterans' Bureau pertaining to said hospital was made by petitioners through their undersigned attorneys prior to the institution of this suit for the purpose of ascertaining the description and quantity of the materials, supplies, equipment, appliances, facilities, plumbing, wiring and piping so removed as aforesaid from said land; but that said undersigned attorneys were not permitted to secure such information from said files and records; that petitioners are informed and believe and therefore aver that the value of said buildings, appliances, structures, improvements, equipment, materials and supplies so removed as aforesaid are of a very large amount, to-wit, in excess of One Hundred Thousand Dollars ($100,000); that the value of said buildings, structures and improvements so removed by the United States as aforesaid from the lands of petitioner, Margaret W. Pearson, is justly due and owing to said petitioner by the United States and said petitioner is justly entitled to the value thereof from the United States and that there exists in favor of the United States no debt, claim or [fol. 15] set-off by which the said amount herein prayed for may or should be reduced; that your petitioners have made no assignment or transfer of said claim or any part thereof or interest therein; that petitioners have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government, and petitioners believe the facts as stated in this petition to be true.

Wherefore, your petitioners pray: That this Honorable Court will render a judgment in favor of petitioners against the United States for the full value of all buildings, structures and improvements removed as aforesaid from said lands in violation of the rights of petitioners.

Margaret W. Pearson, J. R. Pearson, Petitioners and Claimants.

Jurat showing the foregoing was duly sworn to by Norman B. Morrell, omitted in printing.

[fol. 16] EXHIBIT "A" TO PETITION

This lease, Made this 11th day of September, A. D., 1917, by and between J. R. Pearson and Margaret W. Pearson, his wife, of Knox County, Tennessee, herein called the lessors, and Jacksonville Chamber of Commerce, a corporation having its principal office in the City of Jacksonville, Duval County, Florida, herein called the lessee, Witnesseth:

That in consideration of the covenants contained herein on the part of the said lessee to be kept and performed, the said lessors do hereby lease to the said lessee the following property:

A. E. Ferguson Grant, being Section Forty-three (43), in Township Three (3), Range Twenty-six (26) East, containing five hundred and thirty-five (535) acres, more or less, Duval County, State of Florida.

And the said lessors do hereby grant, sell, transfer and deliver unto said lessee all timber upon said aforedescribed property, save and excepting oak trees growing within a distance of three hundred yards from the river front;

To have and to hold, The same for and during the continuance of the war now in progress between the United States of America and the German Empire, provided, however, that this lease shall termi- [fol. 17] nate and expire three years *form* the date hereof, it being the intent and purpose to create a lease to run for a period not longer than three years, which period is to expire upon the termination of said war should said war be terminated within three years *form* the date hereof, the said lessee covenanting and agreeing to save the said lessors harmless *form* any and all taxes or assessments against said property or any ortion of the same during the term of this lease.

And said lessee does further covenant and agree to pay to said J. R. Pearson, as damages to and for the full right, title and interest in and to all timber upon said afore-described property save and excepting oak trees growing within a distance of three hundred (300) yards from the river-front, the sum of Fifteen Hundred ($1500.00) Dollars, as evidenced by 90 day note for said amount this day delivered by said lessee to said J. R. Pearson, the receipt of which note is hereby acknowledged, it being expressly understood and agreed that said lessee is not to remove or damage any of the oak trees growing upon said property within a distance of three hundred (300) yards from the river-front.

It is further covenanted and agreed by the lessee herein, and its successors and assigns, that said property will be used solely for Federal Camp purposes, except as to said timber herein-above granted, bargained and sold to said lessee.

And the lessors, for themselves, their heirs, legal representatives and assigns, covenant and agree with the lessee, its successors and assigns, that all buildings, fixtures and/or other improvements placed in or upon said land during said term by the lessee, its successors or assigns, shall remain the exclusive property of the lessee, its successors or assigns, and at all times during the period of three months [fol. 18] next after the expiration of said term said lessee, its successors or assigns, may enter upon said land for the purpose of removing and may remove said buildings, fixtures and/or other improvements and the timber hereinabove and hereby granted, bargained and sold to the lessee.

And the lessee, for itself, its successors and assigns, hereby covenants and agrees with the lesors, their heirs, legal representatives and assigns, that upon the expiration of said term, or of the said period of three months thereafter, it or they will pay to the lessors, their heirs, legal representatives or assigns, all damages accruing to the lessors, their heirs, legal representatives or assigns, by virtue of injury done to said land, exclusive of timber, by the lessee, its

successors or assigns, during said term or within said period of three months thereafter.

In witness whereof, the said parties have caused these presents to be duly executed the day and year first above written.

J. R. Pearson. (Seal.) Margaret W. Pearson. (Seal.) Jacksonville Chamber of Commerce, by —— —— Its President.

Witnesses: Henry C. Clark, E. P. Owen, Jr., as to J. R. Pearson; Norman B. Morrell, Lucille E. Young, as to Margaret W. Pearson.

Attest: ——, Secretary.

STATE OF FLORIDA,
COUNTY OF DUVAL, *ss:*

I hereby certify that on this day personally appeared before me, [fol. 19] an officer duly authorized to administer oaths and take acknowledgments, J. R. Pearson, to me well known as the person described in and who executed the foregoing lease, and he acknowledged before me that he executed the same freely and voluntarily, and for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal at Jacksonville, in said County and State, this the 10th day of September, A. D. 1917.

E. P. Owen, Jr., Notary Public in and for the State of Florida at Large. My commission expires 24th day of February, A. D. 1921. (Notarial Seal.)

STATE OF TENNESSEE,
COUNTY OF KNOX, *ss:*

I hereby certify, that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Margaret W. Pearson, to me well known and known to me to be the person described in and who executed the foregoing lease, and she acknowledged before me that she executed the same for the purposes therein expressed; and the said Margaret W. Pearson, known to me to be the wife of the said J. R. Pearson, on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said lease for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower, homestead or separate property, statutory or equitable, in and to the lands described therein, for the purpose of said lease, and that she executed the said lease freely and voluntarily and without any com- [fol. 20] pulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Knoxville, County of Knox, and State of Tennessee, this the 17 day of September, A. D. 1917.

Norman B. Morrell, Notary Public. (My Commission expires April, 1918.) (Notarial Seal.)

[fol. 21] II. Defendant's Demurrer.—Filed Sept. 14, 1923

Defendant demurs to the petition in the above-entitled case for the reason that it does not set forth a cause of action against the United States within the jurisdiction of this Court.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Special Assistant to the Attorney General.

III. Argument and Submission of Demurrer

On October 9, 1923, the demurrer in this case was argued and submitted by Mr. William F. Norris, for defendant, and by Mr. Henry C. Clark, for the plaintiff.

[fol. 22] IV. Opinion of the Court by Hay, J.—Entered October 15, 1923

Hay, Judge, delivered the opinion of the court:

In this case the United States has filed a demurrer to the petition of the plaintiffs.

The petition alleges the following facts:

On September 11, 1917, the plaintiffs leased to the Chamber of Commerce of Jacksonville, Florida, a tract of land "for and during the continuance of the war now in progress between the United States of America and the German Empire, provided, however, that this lease shall terminate and expire three years from the date hereof, it being the intent and purpose to create a lease to run for a period not longer than three years, which period is to expire upon the termination of said war should said war be terminated within three years from the date hereof."

The Jacksonville Chamber of Commerce verbally agreed with the War Department of the United States that the land leased by it from the plaintiffs might be used by the United States as a part of the land upon which the United States might construct a training camp for troops of the Army, the said land being thereafter included in and forming a part of Camp Joseph E. Johnston. While the United States was in possession of the land of the plaintiffs under the lease the War Department erected buildings and placed improvements on the aforesaid tract of land and erected the base hospital of Camp Joseph E. Johnston and houses for nurses on said land.

Among other provisions the lease provided as follows:

"And the lessors, for themselves, their heirs, legal representatives and assigns, covenant and agree with the lessee, its successors and assigns, that all buildings, fixtures and/or other improvements placed in and upon said land during said term by the lessee, its successors

or assigns, shall remain the exclusive property of the lessee, its successors or assigns, and at all times during the period of three months next after the expiration of said term said lessee, its successors or assigns, may enter upon said land for the purpose of removing and may remove said buildings, fixtures and/or other improvements."

On December 9, 1920, the plaintiffs through their attorney advised the officer in charge of Camp Jospeh E. Johnston that the three years specified in the lease would expire on December 11, 1920, and that the property should be on that date surrendered to the lessors, "without further removal or molestation of any of the property remaining thereon."

[fol. 23] After some correspondence between the attorney of the plaintiffs and the officers of the United States the plaintiffs were advised on March 28, 1921, as follows by the Surgeon General of the Public Health Service:

"Owing to the necessity of salvaging certain materials placed upon the property by the Government, and now needed elsewhere for hospital purposes, the use of the premises will be required until about May 1, 1921."

The United States after March 28, 1921, proceeded to remove, and did remove, all buildings, structures, and improvements placed by the Government on the land of the plaintiffs. The plaintiffs allege that the property so removed by the United States under the terms of the lease belonged to the plaintiffs and was of the value of $100,000, and they have brought this suit in this court to recover the value of the property so removed.

The plaintiffs seem to rely in the first place upon the terms of the lease, and claim that after the expiration of the three years' period the houses and improvements placed on their property by the Government became theirs. But the lease expressly provides that "all buildings, fixtures, and/or other improvements placed in and upon said land during said terms by the lessee, its successors, or assigns, shall remain the exclusive property of the lessee, its successors or assigns," and while the lease further provides for a period of three months after the expiration of the lease during which period the lessee may enter upon the land for the purpose of removing the buildings, fixtures, and improvements placed thereon, yet there is nothing in this provision which defeats that provision of the lease which provides that the buildings, fixtures, and improvements placed upon the land during the term of the lease shall be the exclusive property of the lessee, its successors or assigns. If this interpretation of the meaning of the lease is correct—and we think it is—then the plaintiffs have no title to the property the value of which they are seeking to recover, and the demurrer of the defendant must be sustained.

The Government, however, as appears from the allegations of the petition, never admitted that the property removed from the land of the plaintiffs was the plaintiffs'. On the contrary, the Government

asserted title to the property and removed the property from the land, claiming that it owned it, and had use for it elsewhere. This fact that the Government claimed title in the property and denies title in the plaintiffs prevents this court from assuming jurisdiction of the controversy. The plaintiffs could only recover under an implied promise. The law will not imply a promise by the Government to pay for an interest or right in land which right or interest the Government claimed, and claims it possessed before it utilized the same. Temple v. The United States, 248 U. S. 121, 130.

The facts alleged in the petition do not show an implied promise to pay; they preclude implying such promises. See also Hill v. United States, 149 U. S. 593, 598, 599.

The demurrer should be sustained and the petition dismissed. And it is so ordered.

Graham, Judge; Downey, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

[fol. 24] V. Judgment of the Court

At a Court of Claims held in the City of Washington on the Fifteenth day of October, A. D., 1923, judgment was ordered to be entered as follows:

This case was submitted upon the defendant's demurrer to the plaintiff's petition, on consideration whereof the court is of opinion that the demurrer is well taken. It is therefore adjudged and ordered that the defendant's said demurrer be sustained, and that the petition be and the same is hereby dismissed.

By the Court.

VI. Plaintiffs' Application for Appeal—Filed December 17, 1923

From the judgment rendered in the above-entitled case on the 15th day of October, nineteen hundred and twenty-three, the petitioners by their attorney on the 17th day of December, nineteen hundred and twenty-three, make application for and give notice of an appeal to the Supreme Court of the United States.

Henry C. Clark, Attorney for Petitioners. Williams & Clark, of Counsel.

VII. Order of Court Allowing Appeal—Filed January 7, 1924.

It is ordered by the court that the plaintiffs' application for appeal be and the same is allowed.

By the Court.

[fol. 25] IN COURT OF CLAIMS

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer; of the opinion of the Court by Hay, J., of the judgment of the court; of the plaintiffs' application for appeal and of the order of the court allowing said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Fourteenth day of January A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of Court of Claims.)

Endorsed on cover: File No. 30,075. Court of Claims. Term No. 264. Margaret W. Pearson and J. R. Pearson, her husband, appellants, vs. The United States. Filed January 24th, 1924. File No. 30,075.